

CITY OF NEWARK
Delaware

CONTRACT NO. 13-13

CURTIS PAPER MILL REMEDIATION AND PARK CONSTRUCTION

ADDENDUM NO. 2

October 30, 2013

1. Please find attached the following documents:
 - a. Memorandum describing changes to the bid document and responses to contractor questions for the Curtis Paper Mill Remediation and Park Construction project.
 - b. DNREC Sediment and Stormwater Approval Letter
 - c. Nationwide Permit (NWP) Approval Letter
 - d. NWP General Conditions
 - e. NWP Work Commencement Form
 - f. NWP Work Completion Form
 - g. Pre-bid Meeting Sign-in Sheets
2. On Page A-9 of the bid document please omit the following sentence:
 - C. A copy of the Certificate of Insurance must accompany each bid.
3. The awarded vendor must submit with the signed agreement a copy of the certificate of insurance.

MEMORANDUM

TO: Charlie Emerson, Director
FROM: William Wendling, P.E.
DATE: October 29, 2013
SUBJECT: Former Curtis Paper Mill Site Park Improvement Project Addendum

Per the Pre-Bid meeting held on October 17, 2013 and subsequent contractor questions/RFI's, please note the following revisions, clarifications and responses to the original bid documents. In addition please find attached to with this document the Department of the Army Nationwide Permit to perform remediation of a brownfield site and DNREC Sediment and Stormwater Plan Approval.

Changes to the bidding documents are below:

- On page A-4, replace the first paragraph with the following

Each bid shall be submitted on the proposal form included herein. The proposal and all other required documents must be submitted in a sealed envelope clearly identified with the bidder's name and marked "City of Newark - Contract No. 13-13, Curtis Paper Mill Remediation and Park Construction". Bid Documents must be received in the Purchasing Office prior to 2:00 p.m. prevailing time, Tuesday, November 17 12, 2013. Each bid so submitted shall constitute an irrevocable offer for a period of sixty (60) calendar days following the bid opening date.

- On page A-10, replace the first (1.) under the Scope of Work from Removal of existing storage tanks, appurtenances and concrete pad with Removal of existing storage tank, appurtenances and concrete pad.
- On page B-30, replace section 2.2-B. with the following:

Suitable soil materials are defined as those complying with Unified Soil Classification System soil classification Groups GW, GP, GM, SW, SM and SP. Suitable soil materials shall consist of residual soils and/or decomposed rock obtained from required on site excavations. Suitable soil materials shall be free of organic matter, ice, snow, and shall not contain rock fragments greater than six three (3") inches in diameter.

Reiterations and clarifications made during the pre-bid meeting are below:

- As the City of Newark Park and Recreation Department stated at the pre-bid meeting and as stated in Landscaping Note 2 on Drawing CS-2000 (sheet 5 of 17): A 2-year maintenance warranty on the landscaping is required and should be accounted for in the bid.
- The Contractor will be responsible for maintaining north-south pedestrian movements along Old Paper Mill Road. The Contractor shall coordinate a meeting to discuss pedestrian detour options with DelDOT Safety at the beginning of the project. The Contractor will be responsible for coordinating with DelDOT Safety (Jim King at (302)326-4494) (2) weeks in advance of any planned sidewalk closure, temporary pedestrian path, pedestrian detour, etc. The Contractor shall submit a pedestrian detour plan for approval if the chosen option warrants it.
- The Contractor shall coordinate a meeting with DelDOT traffic to discuss the installation of new signal equipment (poles, signal heads, etc.), contact information and scheduling in order for DelDOT to program and conduct the work.
- The Contractor will be responsible for installation of all traffic junction wells, traffic signal conduit, and pole foundations as shown on the entrance plans.
- All new signs shown on the entrance plans will be fabricated by DelDOT. The Contractor shall coordinate the sign order and pickup with the DelDOT sign shop to schedule a pickup of the signs and sign posts. The contractor will be responsible for ground mounted sign installations per the entrance plans.

Responses to bidder questions with the original questions included are below:

From Daisy Construction Company:

Questions Dated October 3, 2013:

1. *For Bid Item 6, Remove existing storage tank, it is noted that this is an allowance item. What is the allowance amount?*

The bidder is to provide the allowance number in their bid.

2. *Why are there two prevailing wage rates in the specs (Heavy and Highway)?*

One prevailing wage rate (Highway Construction) is for the work associated with the entrance construction, the other prevailing wage rate (Heavy Construction) is for the remainder of the site.

3. *What is the diameter of Item 21D perforated U-Drain?*

The diameter of the perforated underdrain is 4".

4. *Is Bid Item 55 only supposed to be 1 month?*



PENNONI ASSOCIATES INC.
CONSULTING ENGINEERS

No, the field office is to remain on site throughout construction.

Questions Dated October 7, 2013:

1. *The pipe dimensions shown on Plan Sheet CS-2501 and CS-1500 do not agree. Please clarify.*

The pipe dimensions shown on drawing CS-2501 are the correct dimensions for the pipe.

2. *Brick Piers on Plan Sheet CS-6002 make reference to Detail 3/6603. Where is Drawing 6603?*

The detail is on Plan Sheet CS-6003.

3. *Where are the specs on the recycled brick for the two piers found? All it says is there are located on site. What has to be done to the bricks to make them suitable for reuse? Are there enough on site to complete the brick piers?*

The City of Newark will provide three (3) palettes of the bricks in a suitable for use condition.

4. *Ref Bid Item 68 remove, adjust, install monitoring wells. A note on Plan Sheet CS-1500 indicates this is by others. Please clarify.*

Monitoring wells will be installed prior to the start of construction.

5. *There are specs sections for Item 53E, 53F, and 53G but they are not shown on the pricing proposal. Please clarify.*

The pricing for these items are to be included within the Item 58 Maintenance of Traffic price on the pricing proposal.

6. *There is a spec section of Item 62, Air Monitoring however this item is not shown on pricing proposal. Please clarify.*

Air monitoring (tests) will be required during construction. Refer to the pre-bid meeting minutes for a detailed explanation for what is required.

7. *Bid Items 53A, 53B, 53C, and 53D are shown in the specs but are not shown on the pricing proposal. Please clarify.*

The pricing for these items are to be included within the Item 58 Maintenance of Traffic price on the pricing proposal.



PENNONI ASSOCIATES INC.

CONSULTING ENGINEERS
From Lindstrom Excavating Contractors, Inc.

Question – RFI #2:

We need some clarification in regards to the contaminated soils information for the project:

Does the contractor (working with the contaminated soils) employees have to have the Hazwoper Certifications? Also, does that contractor have to have an environmental engineer to perform the air & soil quality testing to determine what the concentration of the material is that the workers are exposed to, and also to determine what personal safety equipment is needed for the project? (example: respirator, portable shower, etc.)

The response to this RFI is broken into two responses as the RFI is based on a two (2) part question.

- **Yes, the contractor employees working with the contaminated soils have to have Hazwoper Certification. Below is OSHA's position on who HAZWOPER Training applies to:**

Soils are considered hazardous waste when the following criteria are met:

- a. Soils test positive for characteristics of a hazardous waste defined at Title 40 CFR Part 261 Subpart C 261.21-261.24;**
- b. Soil contains a listed waste as per 40 CFR 261 Subpart D 261.31-261.33; and/or**
- c. Soil is a mixture of a solid waste (non-hazardous) and one or more hazardous wastes listed in 40 CFR 261 Subpart D 261.31-261.33.**

The subsurface soil at Curtis Mill Park meets these criteria. As such, the Hazardous Waste Operations and Emergency Response Standard (HAZWOPER) applies to five distinct groups of employers and their employees. This includes any employees who are exposed or potentially exposed to hazardous substances -- including hazardous waste -- and who are engaged in one of the following operations as specified by 1910.120(a)(1)(i-v) and 1926.65(a)(1)(i-v):

- clean-up operations -- required by a governmental body, whether federal, state, local, or other involving hazardous substances -- that are conducted at uncontrolled hazardous waste sites;**
- corrective actions involving clean-up operations at sites covered by the Resource Conservation and Recovery Act of 1976 (RCRA) as amended (42 U.S.C. 6901 et seq.);**
- voluntary clean-up operations at sites recognized by federal, state, local, or other governmental body as uncontrolled hazardous waste sites;**



PENNONI ASSOCIATES INC.
CONSULTING ENGINEERS

- operations involving hazardous wastes that are conducted at treatment, storage, and disposal facilities regulated by Title 40 Code of Federal Regulations Parts 264 and 265 pursuant to RCRA, or by agencies under agreement with U.S. Environmental Protection Agency to implement RCRA regulations; and
 - emergency response operations for releases of, or substantial threats of releases of, hazardous substances regardless of the location of the hazard.
- The Contractor is NOT required to have an environmental engineer perform the air and soil quality testing to determine what the concentration of the material is that the workers are exposed to. However, such testing must be conducted by someone who possesses the required HazWoper training needed in order to be able to access the site and the contractor must also be able to demonstrate that this individual possesses sufficient knowledge of the sampling protocols and media required for the soil contaminants of concern at the site and must be able to interpret the data in order to present factual explanations relative to what the exposure risks are.

The Contractor is required to have its own Health and Safety Officer (as identified in the Site Specific Health And Safety Plan (SSHASP) that is required to be prepared and submitted by the Contractor) and this individual must possess the requisite training and education sufficient to fulfill the duties of that position including being able to make the necessary determinations as to what personal safety equipment is required to protect the workers working with the site-specific contaminated soils, to include but not be limited to determining if and/or when respiratory protection is required and what type and what level of protection based on the concentrations identified in the air sampling data; as well as what, if any decontamination procedures are necessary based on the known concentrations and site conditions; as well as the frequency of any air or soils quality testing, etc.



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
DIVISION OF WATERSHED STEWARDSHIP
89 Kings Highway
DOVER, DELAWARE 19901

OFFICE OF THE
DIRECTOR

PHONE: (302) 739-9921
FAX: (302) 739-6724

SEDIMENT AND STORMWATER PLAN APPROVAL

Tracking No.: 2013-077

Issued To: Mr. Charles R. Emerson
Director of Parks & Recreation
City of Newark
220 S Main St
Newark, DE 19711

September 6, 2013

Dear Mr. Emerson,

Your plans for the Curtis Paper Mill Remediation & Park Construction, as submitted by your authorized agent, Mr. William Wendling, PE of Pennoni Associates, Inc., have been reviewed and evaluated regarding the Sediment and Stormwater Management requirements of this Division and are approved with conditions (see attached).

Approval of a Sediment and Stormwater Plan does not grant or imply a right to discharge stormwater runoff. The owner/developer is responsible for acquiring any and all agreements, easements, etc., necessary to comply with State drainage and other applicable laws.

NOTE: Effective July 1, 2004, all State and Federal projects will require inspection services by an approved Certified Construction Reviewer.

This plan approval pertains only to compliance with the "Sediment and Stormwater Regulations", effective January 23, 1991, and the current version of the Delaware Erosion and Sediment Control Handbook. Please understand that the approval of this plan does not relieve you from complying with any and all federal, state, county, or municipal laws and regulations.

We provide technical assistance, environmental education, and training to those we regulate. If we may be of any assistance to you, regarding the sediment and stormwater aspects of this project, please contact us at the address and number listed above.

Very truly yours,

Randell K. Greer, PE
Engineer VI

cc: Jamie Rutherford, Program Manager II
Steve Anderson, Pennoni Assoc., Inc.
Larry Jones, DNREC/SIRS

Delaware's good nature depends on you!

CONDITIONS OF APPROVAL

NOTIFICATION

- 1) Notify the DNREC Sediment and Stormwater Management Section of your intention to begin construction five (5) days prior to commencing. Failure to do so constitutes a violation of the approved plan.

INSPECTIONS

- 2) Regular on-site inspections of your project will be conducted by DNREC personnel to monitor the performance of the approved plan to determine if additional erosion and sediment controls are necessary.
- 3) Keep available on-site, during all phases of construction activity, a copy of the approved Sediment and Stormwater Management Plan.

GRADING

- 4) At any location where sediment laden runoff may exit the property, perimeter controls shall be installed to prevent sediment from being transported off-site.
- 5) Any sediment transported off-site to roads or road rights-of-way including ditches shall be removed. Any damage to ditches shall be repaired and stabilized to original condition.
- 6) Grading shall not impair surface drainage, create an erosion hazard, or create a source of sediment to any adjacent watercourse or property owner.
- 7) Local grading requirements may supplement these grading conditions.

CHANGES TO THE APPROVED PLAN

- 8) This project is to be undertaken in accordance with the plans submitted and as approved. If changes are necessary at any time during the completion of the project, submit revised plans, prior to further construction, to this office at the above address to receive a supplemental approval.

PERMANENT STORMWATER MANAGEMENT COMPONENT

- 9) Failure to implement the permanent stormwater management practices as mentioned herein constitutes a violation of the conditions of this plan approval; it may result in the suspension or revocation of building permits or grading permits issued by the local jurisdiction; and it may result in legal action by the DNREC to bring the site into compliance with the approved Sediment and Stormwater Management Plan and the Delaware Sediment and Stormwater Regulations.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

PHILADELPHIA DISTRICT CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

OCT 11 2013

Regulatory Branch
Application Section I

SUBJECT: CENAP-OP-R-201300521-64 (NWP 38)
Project Name: Curtis Mill Park, Newark DE
Location: 39.690470° N -75.750271° W

Mr. Charlie Emerson, Director
City of Newark Parks & Recreation
220 South Main Street
Newark, DE 19711

Dear Mr. Emerson:

This is in regard to your proposal to perform remediation of a brownfields site, i.e. the former Curtis Paper Mill site, Delaware Department of Natural Resources (DNREC) Project No. DE-1153, and to provide for beneficial re-use of the contaminated site by converting it into parkland. A remediation plan for the site was approved by DNREC Division of Waste and Hazardous Substances (Site Investigation and Restoration Section), New Castle, DE on November 28, 2011. The location of the project is at, or in the vicinity of 225 Paper Mill Road, Newark, DE on tax parcels 1801400266 and 1801400267.

Under current Federal regulations, a Department of the Army permit is required for work or structures in navigable waters of the United States and/or the discharge of dredged or fill material into waters of the United States including adjacent and isolated wetlands. Based upon our review of the information you have provided, it has been determined that the proposed work is approved by the existing Department of the Army Nationwide Permit (NWP) described below.

38. Cleanup of Hazardous and Toxic Waste. Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 31.) (Sections 10 and 404)

Note: Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

You are advised that this verification of NWP authorization is valid until the Nationwide Permits expire on March 18, 2017, unless the NWP authorization is modified, suspended, or revoked prior to this date. In the event that the NWP authorization is modified during that time period, this expiration date will remain valid, provided the activity complies with any subsequent modification of the NWP authorization.

It is noted that CZM consistency from the State is only required for those activities in or affecting a State's coastal zone. Additionally, some of the NWPs do not involve a discharge of dredged or fill material, and as such, do not require a 401 WQC. If the State has denied the required WQC and/or not concurred with the Corps' CZM consistency determination, the NWP authorization is considered denied without prejudice until an individual project specific WQC and/or CZM approval is obtained. This approval must be obtained in order for the activity to be authorized under the NWP and a copy provided to this office before work begins. Any project specific conditions required by the State for the WQC and/or CZM approval will automatically become part of the NWP authorization.

You should carefully note that this NWP authorization is based upon your agreement to comply with the terms and conditions of this NWP (Enclosure 1) including any and all attached project specific special conditions listed below. Initiation of any authorized work shall constitute your agreement to comply with all of the NWP's conditions. You should also note that the authorized work may be subject to periodic inspections by a representative of this office. The verification of a Nationwide Permit including all general and special conditions is not subject to appeal.

PROJECT SPECIFIC SPECIAL CONDITIONS:

1. All work performed in wetlands and/or waters in association with the above noted project, shall be conducted in accordance with a set of plans noted below, and in accordance with the plan approved by Delaware Department of Natural Resources (DNREC) Division of Waste and Hazardous Substances, Site Investigation and Restoration Section, for the former Curtis Paper Mill Site, DNREC Project No. DE-1153, approved on November 28, 2011:

(a) Curtis Mill Park, 225 Paper Mill Road Newark, DE, "Approximate Permitting Plan", prepared by Pennoni Associates, Inc., Newark, DE, dated March 29, 2013; last revised April 15, 2013;

(b) Curtis Mill Park, 225 Paper Mill Road Newark, DE, "Site Plan" sheet 3 of 15, drawing number CS1000, prepared by Pennoni Associates, Inc., Newark, DE, dated January 31, 2013 last revised April 15, 2013;

(c) Curtis Mill Park, 225 Paper Mill Road Newark, DE, "Grading Plan" sheet 4 of 15, drawing number CS1500, prepared by Pennoni Associates, Inc., Newark, DE, dated January 31, 2013; last revised April 15, 2013;

(d) Curtis Mill Park, 225 Paper Mill Road Newark, DE, "Landscaping Plan" sheet 5 of 15, drawing number CS2000, prepared by Pennoni Associates, Inc., Newark, DE, dated February 11, 2013; last revised April 15, 2013;

(e) Curtis Mill Park, 225 Paper Mill Road Newark, DE, "Cross Section and Profiles" sheet 7 of 15, drawing number CS3505, prepared by Pennoni Associates, Inc., Newark, DE, dated January 31, 2013; last revised April 15, 2013;

(f) Curtis Mill Park, 225 Paper Mill Road Newark, DE, "Erosion and Sediment Control Details, 5 of 5", drawing number CS-8505 prepared by Pennoni Associates, Inc., Newark, DE, dated January 31, 2013; last revised August 29, 2013;

The project plans provide for work including Remediation of the former Curtis Paper Mill site, City of Newark, DE, DNREC Project No. DE-1153 utilizing a plan was approved by DNREC Division of Waste and Hazardous Substances, Site Investigation and Restoration Section, 391 Lukens Drive, New Castle, DE on November 28, 2011. Contaminated hot spots identified on the Old Paper Mill Site will be excavated and consolidated within the former developed portions of the site (ex. building footprint area) and capped with clean fill per the approved remedial action plan. Some excavation is to occur within identified wetland areas. Once excavated these areas will either be brought back to pre-existing elevations with clean fill as part of the required capping process or a lower more appropriate elevation to encourage establishment of natural and native comparable habitats. The project includes no loss of wetlands. Also, the project includes filling of 0.18 acre of wetlands, i.e. 0.18 acre of wetlands will be excavated and returned to near the pre-existing elevation (may be slightly lower elevation), using clean fill material. Types(s) and amounts of material being discharged: approximately 371 cubic yards of clean fill. Wetlands impacts/fills/grading occur within approximately 150 feet of the OHWM of White Clay Creek, part of a designated Wild and Scenic River System.

The project purpose is to remediate the site, to protect human health and the environment and to provide for beneficial re-use of the contaminated site by converting it into parkland. Impacts to floodplain areas and on existing vegetation, consisting of primarily wasteland type invasive and nuisance species, will be improved upon by installation of native and naturalized species plants.

2. Construction activities shall not result in the disturbance or alteration of greater than .25 acres of waters of the United States, including wetlands; and there will be no permanent loss of waters of the US, including wetlands.

3. Any deviation in construction methodology or project design from that shown on the above noted drawings or repair plan must be approved by this office, in writing, prior to performance of the work. All modifications to the above noted project plans shall be approved, in writing, by this office. No work shall be performed prior to written approval of this office.

4. This office shall be notified prior to the commencement of authorized work by completing and signing the enclosed Notification/ Certification of Work Commencement Form (Enclosure 2). This office shall also be notified within 10 days of the completion of the authorized work by completing and signing the enclosed Notification/Certification of Work Completion/Compliance Form (Enclosure 3). All notifications required by this condition shall be in writing. The Notification of Commencement of work may be sent to this office by facsimile or other electronic means; all other notification shall be transmitted to this office by registered mail. Oral

notifications are not acceptable. Similar notification is required each time maintenance work is to be done under the terms of this Corps of Engineers permit.

5. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

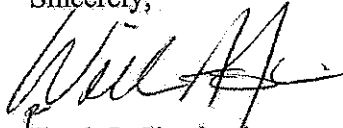
6. The authorized excavation, filling and associated activities shall be performed in accordance with the State and/or County standards for Soil Erosion Sediment Control.

7. That after completion of construction, all disturbed areas shall be permanently stabilized by seeding and mulching, other approved methods, and/or by the planting of plant species native to the area.

8. For Item 4 in the sequence of construction on the plan identified as "Erosion and Sediment Control Details, 5 of 5", drawing number CS-8505 prepared by Pennoni Associates, Inc., Newark, DE, dated January 31, 2013; last revised August 29, 2013"; if modification or revision of Item 4 is desired it will require coordination with National Parks Service. Also, as per General Condition 19 of the nationwide permits, the permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

Also enclosed is a pre-addressed postal card (Enclosure 4) soliciting your comments on the processing of your application. Any comments, positive or otherwise, on the procedures, timeliness, fairness, etc., may be made on this card. If you should have any questions regarding this matter, please contact Michael Green at 215-656-6836 or write to the above address.

Sincerely,



Frank J. Cianfrani
Chief, Regulatory Branch

Enclosures

Copies Furnished:

DDNREC, Wetlands and Subaqueous Lands (Dover, DE)
DDNREC, Coastal Zone Management Program (Dover, DE)
NMFS (Sandy Hook, NJ)
USFWS (Annapolis, MD)
NPS (Philadelphia, PA)

Agent: Mr. William K. Hohman
Pennoni Associates Inc.
Christiana Executive Campus
121 Continental Drive, Suite 207
Newark, DE 19713

Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR §§ 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR § 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective

operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under

the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical

resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may

require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification. (a) **Timing.** Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental

effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

D. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (a) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period, with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

NOTIFICATION/CERTIFICATION OF WORK COMMENCEMENT FORM

Permit Number: CENAP-OP-R-2013-00521-64 (NWP38)
State Permit #: CZM/WQC issued for
Name of Permittee: City of Newark Parks & Recreation
Project Name: Curtis Mill Park
Waterway: White Clay Creek
County: New Castle State: Delaware
Compensation/Mitigation Work Required: Yes ☐ No ☒

TO: U.S. Army Corps of Engineers, Philadelphia District
Wanamaker Building - 100 Penn Square East
Philadelphia, Pennsylvania 19107-3390
Attention: CENAP-OP-R

I have received authorization to: perform work on, and adjacent to the Army Creek Dike, including raising of the existing dike crest by enlarging the earthen dike sections; raising and extending steel sheet pile walls; re-grading and re-armoring the flood side slopes and placing rip-rap armor and other work.

The work will be performed by:

Name of Person or Firm _____

Address: _____

I hereby certify that I have reviewed the approved plans, have read the terms and conditions of the above referenced permit, and shall perform the authorized work in strict accordance with the permit document. The authorized work will begin on or about _____ and should be completed on or about _____.

Please note that the permitted activity is subject to compliance inspections by the Army Corps of Engineers. If you fail to return this notification form or fail to comply with the terms or conditions of the permit, you are subject to permit suspension, modification, revocation, and/or penalties.

Permittee (Signature and Date)

Telephone Number

Contractor (Signature and Date)

Telephone Number

NOTE: This form shall be completed/signed and returned to the Philadelphia District Office a minimum of 10 days prior to commencing work.

Enclosure 2

NOTIFICATION/CERTIFICATION OF WORK COMPLETION/COMPLIANCE FORM

Permit Number: CENAP-OP-R-2013-00521-64 (NWP38)
State Permit #: CZM/WQC issued for
Name of Permittee: City of Newark Parks & Recreation
Name of Contractor: _____
Project Name: Curtis Mill Park
Waterway: White Clay Creek
County: New Castle State: Delaware

Within 10 days of completion of the activity authorized by this permit, please sign this certification and return it to the following address:

U.S. Army Corps of Engineers, Philadelphia District
Wanamaker Building - 100 Penn Square East
Philadelphia, Pennsylvania 19107-3390
Attention: CENAP-OP-R

Please note that the permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to return this notification form or fail to perform work in compliance with the permit, you are subject to administrative, civil and/or criminal penalties. Further, the subject permit may be suspended or revoked.

The authorized work was commenced on _____.

The authorized work was completed on _____.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the above noted permit.

Signature of Contractor

Signature of Permittee

Address:

Address:

Telephone Number:

Telephone Number:

For project located in areas identified as shellfish habitat, you must include with this form a bill of lading; sales order or any other document(s) demonstrating non-polluting materials were purchased and utilized for your project. I hereby certify that I and/or my contractor have utilized non-polluting materials as defined in the above noted permit.

Signature of Contractor

Signature of Permittee



Pre-Bid Meeting
Sign in Sheet
Contract 13-13 - Curtis Paper Mill Remediation and Park Construction
Thursday - October 17, 2013
1:30 P.M.

PLEASE PRINT

#	NAME	MAILING ADDRESS	PHONE	EMAIL
1	Leah Jansky	DART CONSTRUCTION CO 102 LANCY CIRCLE NEWARK, DE 19704	(302) 658-4417	jjansky@dartconstruction.com
2	Danny Hanna	Adel Construction Co 10 Adel Drive Newark DE 19704	602-363-3404	estimates@a-del.com estimates@a-del.com
3	Julian Heal	LUZON, INC. 222 TRIST RD., SEWELL, NJ 08080	856-582-2008	jheal@luzoninc.com
4	TERREY EVERMET	BRADSHAW CONSTRUCTION 101 PIGEON POINT RD. NEW CASTLE, DE 19720	302-571-9773	TERREY@BRISCO.COM
5	VINCENT DILLS	MENIT CONSTRUCTION ENGINEERS, INC. 5700 HUNNWOOD HIGHWAY WILMINGTON, DE 19806	302-992-9810	vincedmills.com
6	DAVE TOMPS	ENVIRONMENTAL RESTORATION, INC. 191 Count Dale Ave. Count Dale PA 19704	570-331-8191	ENVRESINC@AOL.COM
7	Stephen Wozniak	BATA ENVIRONMENTAL ASSOCIATES, INC c/o SAFEFIELD WY NEWARK, DE 19713	302-737-3376	stephenwozniak@bataenv.com
8	Jon Prinz	JPC GROUP 888 Blackwood Barnsboro Rd Blackwood NJ 08012	856-238-0400	jonp@jpcgroupinc.com
9	Josaf Lucinski	REBA PO Box 5377 Philadelphia PA 19142	815-729-3220	jplucinski@repsg.com
10	Bob King	340 Dairland Ave Arling PA 19002	815 646 8172	RKing@Abidale.com
11	Bill Rosenberger	ENTERPRISE NETWORK RESOLUTIONS COMPANY LLC P.O. Box 70 Wilmington, NJ 08095	609-567-0600	billr@entrcontracting.com
12				





PLEASE PRINT

Pre-Bid Meeting
Sign In Sheet
Contract 13-13 - Curtis Paper Mill Remediation and Park Construction
Thursday - October 17, 2013
1:30 P.M.

#	NAME	MAILING ADDRESS	PHONE	EMAIL
13	Brian Jamison Jr	4 James CT. Wilmington DE 19814	(302) 429-0865	Brian Jr@Brandyvineassociates
14	Josh Sobelman	861 Industrial St. Brightfield's, Inc. Wilmington DE 19801	302-686-9600	jsobelman@brightfieldsinc.com
15	Pat Erony	Murphy's Mill, Concord, DE 1007 Industrial Drive Middleburg DE 19209	(302) 378-7736	perony@murphyandmill.com
16	Nathan Johnson	935 Ranuar Drive Newark DE 19711	302-292-1166	Ericrouse@aol.com
17	ANDREU LIKOS	303 CARSON DR. BEAR, DE	609.651.9178	ALIKOS@GESSONCALL.COM
18	Jason McNew	3116 Continental Dr. Abingdon, MD 21009	443-379-2700	jmcnew@eqest.com
19	JOE CORRADO	GREGG & FERRARO INC NEW CASTLE DE	302-658-5244	JCGF INC@AOL.COM
20	Pat McNeil	110 East Scrimmo Drive, Bear DE 19714	302 388 6712	PMCNELIS@REYBOUTON.COM
21	B.J. Jones	Pennington	302 362-4300	Bones@pennington.com
22	B. H. Adams	Waste Management Utilakap PA 200 Ashell Rd	215-651-9186	BADAMS@WM.COM
23	Stephen Julian	Eastern States Construction 702 First State Blvd. Wilmington DE 19801	302-945-2259	SJulian@Eastern-states.net
24	Cory Lindstrom	25820 Still pond road, Worton MD 20697 81678	410-778-6344	Lindstr@AOL.com
Anthony Pistora		761 Gessona Lane	302-998-8486	tony@ciilobros.com
Curtis Paper Mill		NEW CASTLE, DE 19720		Pennington